

FILED
OCT 23 2015
COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JOHN A. TRICE,

No. 196

NOTICE OF FORMAL PROCEEDINGS

To John A. Trice, a judge of the San Luis Obispo County Superior Court
from January 2003 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial
Performance, rules 109 and 111, having been made, the Commission on Judicial
Performance has concluded that formal proceedings should be instituted to inquire
into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in
office, conduct prejudicial to the administration of justice that brings the judicial
office into disrepute, and improper action within the meaning of article VI, section
18 of the California Constitution providing for removal, censure, or public or
private admonishment of a judge or former judge, to wit:

COUNT ONE

A. In 1990, you and Dawna Trice divorced after 18 years of marriage. The Marital Settlement Agreement and the Judgment of Dissolution, filed in June 1990, included a provision regarding the division of the community property share of your future military retirement benefits. The judgment provided that the court was to retain jurisdiction over your retirement benefits with the Air Force and that you were to pay to Dawna a share of those benefits "as and when received," as follows:

The Court specifically retains jurisdiction over Petitioner's retirement benefits with the Un[it]ed States Air [F]orce and Petitioner is ordered to pay to Respondent her interest in the retirement and pension benefits as and when received on the following formula: Respondent's interest equals one-half ($1/2$) times the gross monthly benefits times a fraction, the numerator of which is 3,402 points and the denominator of which is the total number of points accumulated by Petitioner in past and future service in the United States Air [F]orce and/or Reserve duty.

Dawna was represented in the dissolution proceeding by attorney Patrick Perry, a family law specialist. After the divorce, Dawna moved to Arizona.

In 2003, you took the bench. In 2004, Patrick Perry was appointed as a commissioner by the San Luis Obispo County Superior Court.

In approximately February 2012, you called Commissioner Perry into your chambers as he happened to walk by to discuss the calculation of Dawna's share of your military retirement benefits. (You were eligible for retirement from the Air Force Reserve in June 2012, when you turned 60.) Retired Judge Roger Picquet, a retired military officer, also was present. You had with you the number of points that was the fraction numerator, or Dawna's share of your total number

of points. Estimates were made of your total points, and the calculation of Dawna's share was discussed.

You began receiving your military retirement benefits on July 2, 2012. You did not notify Dawna that you had retired from the military or that you were receiving your military pension. You did not pay Dawna her share of your military pension as and when you received the payments. You deposited Dawna's estimated share into a credit union checking account that was not in her name.

At some point in 2012 after you began receiving your military retirement benefits, you called Commissioner Perry into your chambers as he happened to walk by. No one else was present. You told Commissioner Perry that you had decided or figured out what to do about the military pension. You stated that you had decided to take part of the retirement benefit you were receiving and put it into another account. You told the commissioner, "This way if she asks for it, I'll have to pay her, and if she doesn't ask for it and dies before me, I'll keep it," or words to that effect. Commissioner Perry responded, "You can't do that, John." You replied with words to the effect of, "Of course I'm not going to do that."

You did not thereafter notify Dawna that you had retired from the military or that you were receiving your military pension, and you did not pay Dawna her share of your military pension payments. You continued to deposit her estimated share into the credit union checking account.

In mid-April 2014, Dawna learned of your military retirement. In approximately May 2014, you were contacted by attorney Christopher Duenow on behalf of Dawna. In July 2014, you entered into a stipulation addressing the arrears in which you agreed to pay Dawna approximately \$19,000, and agreed to certain terms concerning future payments.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, and 2A.

B. On May 22, 2014, you met with attorney Duenow in your chambers to discuss a resolution to the money you owed Dawna from your military retirement

benefits under the Marital Settlement Agreement and the Judgment of Dissolution. During that meeting, in explaining why you had failed to make pension benefit payments to Dawna once you started to receive them in July 2012, you told Duenow that you had acted upon advice given to you by Commissioner Perry. This statement about what Commissioner Perry said to you was false. In making this statement, you implied that Commissioner Perry gave you advice contrary to the interests of his former client, and contrary to the Marital Settlement Agreement and Judgment of Dissolution.

On July 21, 2014, you met with Court Executive Officer Susan Matherly in your chambers. You told Matherly that when you retired from the military you had talked to Commissioner Perry about what to do about your pension obligation to your former wife. You told Matherly that you asked Commissioner Perry, words to the effect of, "Do I tell her? Give it to her?" You told Matherly that Commissioner Perry told you, words to the effect of, "You can put it in trust but can't cut her a check because you don't know what the withholdings are," and that he further told you, words to the effect of, "Don't spend it, put it in a trust and wait for her to ask for it." You told Matherly that you had put money aside for your ex-wife and had done what Commissioner Perry had told you to do. The statements you made about what Commissioner Perry said were false. In making these statements, you implied that Commissioner Perry gave you advice contrary to the interests of his former client, and contrary to the Marital Settlement Agreement and Judgment of Dissolution.

You also made statements to others implying that you acted on advice from Commissioner Perry in not notifying Dawna of your military retirement, or paying to her her share of your military pension payments as and when you received them.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, and 2A.

C. On or before July 15, 2014, you contacted Judge Barry LaBarbera and asked if he would sign a stipulation under which your ex-wife would get money that you owed her. Judge LaBarbera asked if your ex-wife had counsel; you stated that she did. Judge LaBarbera stated that if your ex-wife's attorney agreed with the stipulation, you should give it to Court Executive Officer Matherly and if she agreed with it he would sign it.

On July 15, 2014, you signed a stipulation addressing the pension benefit arrears and future payments owed to Dawna and also an accompanying qualifying court order. (No. DR 17310.) (You were not represented by counsel in this matter; Dawna was represented by attorney Duenow.) Later that day, you called Duenow's office and spoke with his paralegal. You told the paralegal that you were concerned about submitting the documents to the court for a judge's signature and filing, as you thought the judges would start disqualifying themselves to keep from signing the documents. You stated that you had arranged for Judge LaBarbera to sign the documents. You stated that you did not want Duenow's office to file the documents the regular way, but instead wanted them to submit the documents to Court Executive Officer Matherly, whom you stated was on vacation until Monday (July 21). You stated that you had signed the documents and had sent them to Duenow's office with a check for Dawna enclosed.

On or about July 21, 2014, you met with Matherly in your chambers. You told Matherly that you had called her on the previous Friday (July 18) because you and Dawna's attorney were stipulating that Judge LaBarbera would sign the stipulation and accompanying order, and you wanted her to process these documents. You told Matherly that the stipulation and accompanying order would be delivered to her. Matherly received the stipulation and order from Duenow's firm shortly thereafter, and left them on Judge LaBarbera's desk for his signature. Judge LaBarbera signed the stipulation and the accompanying order on July 28, 2014. Thereafter, the documents were returned to Matherly and she forwarded

them to the head civil clerk for filing. You abused your authority and circumvented the ordinary procedures in submitting the stipulation and order for a judicial officer's signature.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 2B(2).

COUNT TWO

A. On May 1, 2013, then-Assistant Presiding Judge Dodie Harman sent you an email stating:

I was trying to find you this afternoon to talk about tomorrow's calendars. I may need to get some help from you and wanted to see if you could help out. I was told you had left for the day so I was just wondering where you were because you did not check with me if we were covered before you left. If you could let me know where you were and if you are available to help with calendars tomorrow I would appreciate it.

Thanks,
Dodie

That night, you responded with the following email, which you copied to the court executive officer and three judges:

Dear Ms. Assistant Presiding Judge and Criminal Team "Supervising Judge" –

As I told you last week, we have Veteran's Treatment Court meetings every Wednesday until kick-off on June 14th.

I can't help tomorrow.

I handled my calendar today, D10's morning calendar today, D10s 2960 calendar today with two court trials and 3 search warrants. Then I went to the Vet's Hall

for the meeting, which turns out – he cancelled, so I talked with the V.A. rep for about an hour and came home. I just got done handling an after hours search warrant and a 20 page Pen Register Request. I'm sure you are just as busy with your physical therapy, workout time and all.

I don't appreciate you checking on me – I don't work for you and never will. I was elected by the citizens of this county, unlike you. I would hope you and your pals upstairs would have better things to do with your time as Superior Court Judges than keep a journal on another Judge's comings and goings.

Pathetic. . . . get a life. I look forward to running against you for P.J. The Court will be a lot better off without you in some position of assumed power. Good luck in the campaign.

Have a really nice night.

My civil attorneys say I should have no more contact with you or [Judge] Tangeman without an impartial witness or reporter present. I plan to take their advice.

Sincerely,

John A. Trice, Judge
San Luis Obispo Superior Court

Your May 1, 2013 email violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), and 3C(2).

B. The San Luis Obispo court has a policy of rotating court reporters periodically. On October 30, 2014, the next court reporter rotation was released. You sent the Operations Director an email stating that you would not work with the court reporter assigned to your department. Court Executive Officer Matherly responded to your email on October 31, stating that rotations should be the same

for everybody and reminding you of a discussion about the issue at a recent judges' meeting.

On October 31, you sent an email to Matherly in which you threatened to not take the bench and to publicly embarrass the court reporter if the rotation was not changed: "She either moves, or the P.J. can move me and my staff. I will not call my calendar on Tuesday with her in the courtroom. I will order her out of the room in public view." (Following another exchange of emails on October 31-November 1, you stated that you would work with the assigned reporter and apologized to Matherly for any stress you had caused her.)

Your October 31, 2014 email violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3C(1), and 3C(2).

COUNT THREE

You and criminal defense attorney David Hurst have been close personal friends since approximately the mid-1980's. Attorney Hurst has regularly appeared before you since you took the bench in 2003. You do not either disqualify yourself or disclose your friendship with attorney Hurst on the record in cases in which he appears.

Your conduct violates the Code of Judicial Ethics, canons 3E(1) and 3E(2).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform

in style to the California Rules of Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

Dated: 10/8/15



Honorable Erica R. Yew
Chairperson

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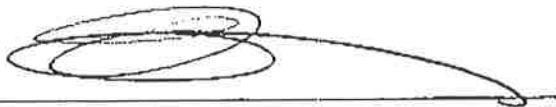
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JUDGE JOHN A. TRICE

No. 196

ACKNOWLEDGMENT OF SERVICE
OF NOTICE OF FORMAL
PROCEEDINGS

I, Eugene G. Iredale, on behalf of my client, Judge John A. Trice, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 196 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Trice has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 23 October 2015


Eugene G. Iredale
Attorney for Judge John A. Trice
Respondent